

# Attachment E

**SOAH DOCKET NO. 473-99-0155  
PUC DOCKET NO. 20334**

<b>EMERGENCY PETITION OF THE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ADVISORY COMMISSION ON STATE</b>	<b>§</b>	
<b>EMERGENCY COMMUNICATIONS</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND THE GREATER HARRIS COUNTY</b>	<b>§</b>	
<b>9-1-1 EMERGENCY NETWORK FOR</b>	<b>§</b>	
<b>DECLARATORY RULINGS ORDERING</b>	<b>§</b>	
<b>SOUTHWESTERN BELL TELEPHONE</b>	<b>§</b>	
<b>COMPANY TO UNBUNDLE ITS 9-1-1</b>	<b>§</b>	
<b>NETWORK AND 9-1-1 DATABASE</b>	<b>§</b>	
<b>MANAGEMENT SYSTEM</b>	<b>§</b>	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
BRIEFING ON THRESHOLD LEGAL/POLICY ISSUES**

COMES NOW SOUTHWESTERN BELL TELEPHONE COMPANY (SWBT) with its brief responding to the six questions contained in the "Order Requesting Briefing on Threshold Legal/Policy Issues" issued by the Texas Public Utility Commission (PUC) on February 8, 1999.

**I. INTRODUCTION**

The Advisory Commission on State Emergency Communications (ACSEC), Greater Harris County (GHC) and SCC Communications Corporation's (SCC) propose to "unbundle" the provision of E-911 services by splitting out the integrated components that constitute routing for the E-911 service, i.e., the associated E-911 Selective Routing database, and the physical components used to link this database to the E-911 tandem switch. SCC then seeks to interconnect with SWBT's telecommunications network at the tandem switch to insert its own routing control data which would direct an end-user's call to the proper "Public

Safety Answering Point" ("PSAP").<sup>1</sup> SCC argues that they provide this data interjection function to several major Incumbent Local Exchange Carriers today and should be allowed to provide this function under contract to the 911 agencies. (See SCC Motion to Intervene, PUC Docket No. 20334 p. 2) However, SCC fails to mention that they perform this function as an agent (i.e., sub-contractor) to those LECs and not as a competitive E-911 database service provider to the local 911 agencies, as proposed in Texas. This relationship between SCC and the LECs allows the LECs to maintain control over the quality of service that they are responsible to maintain in the performance of their obligation to deliver 911 calls, i.e., SCC is directly accountable to each LEC through contract to meet specific performance and reliability requirements. The business relationship proposed by SCC and certain Texas 911 agencies would take away SWBT's ability to control the quality of service they provide in routing and delivering 911 calls, i.e., SCC would not be directly accountable to SWBT, thus SWBT would be placed in the untenable position of being responsible for completing the call without the ability to ensure the routing information is appropriate.

Of even more importance, SCC also fails to mention that they are the sole provider of this data interjection function in those areas where they have been contracted to provide

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<sup>1</sup> SCC wants to operate a Database Management System that consists of three functional components – a Management System, a Selective Routing database, and an ALI database. The Management System provides overall management for a 911 database system. It houses the "Master Street Address Guide," processes service order information, updates the Selective Routing and ALI databases, and generates reports. The Selective Routing database contains records that are used by an E-911 tandem switch during call processing to determine routing for a 911 call. The Automatic Location Identification (ALI) database provides the name and location of the caller and the emergency services serving the caller's location to the Public Service Answering Point (PSAP) receiving a 911 call. SCC also wants the SWBT E-911 tandem switches to query the SCC Selective Routing database as the tandems process 911 calls to determine routing for those 911 calls. SWBT employs E-911 tandem switches to route 911 calls to designated PSAPs. Each SWBT E-911 tandem switch must query a Selective Routing database in the course of processing a 911 call for information (i.e., an Emergency Service Number, ESN) that it can use to determine routing for the PSAP designated to receive the 911 call. The Selective Routing function is integral to the E-911 tandem switch as the switch can only query one Selective Routing database. SCC has asked SWBT to upgrade their E-911 network to enable the operation of two Selective Routing databases.

this service. That is, SCC is a subcontractor of Ameritech and U.S. West, and in that capacity SCC provides the Selective Routing database that Lucent provides for SWBT. In those companies, as well as in SWBT, the Selective Routing function is provided either directly by or through subcontract with the E-911 network provider. That arrangement is necessary because current E-911 systems do not technically support an environment where an E-911 tandem switch would query multiple databases for routing information. Although, the 5ESS E-911 tandem is the only switch type employed by SWBT that even has the ability to directly query the SCC database for routing information; even the 5ESS E-911 tandem does not have the ability to query both the SWBT Selective Routing database and a second adjunct database as requested by SCC.<sup>2</sup> Moreover, neither 1A ESS and DMS-100 E-911 tandems used in Texas can directly query the SCC database for routing information.

SWBT has legitimate network integrity concerns about querying a third party's database during call processing to determine routing for a 911 call. If SWBT has to query multiple third party databases to determine where to route the call, while an emergency call is on the line, the 911 call may be delayed for a number of reasons. In querying a third party database, 911 is dependent upon the reliability of other service providers' equipment and the interconnecting network between the service providers. For example, the quality of service in terms of call setup delay and the number of calls experiencing default routing can be adversely effected.

Operational procedures employed by third party database providers can have a major impact on the 911 call routing (e.g., what is an acceptable down-time, what are

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<sup>2</sup> SCC has asked SWBT to modify their 5ESS E-911 tandems in a way that would allow the tandems to query an SCC database in addition to the SWBT database. The ability for a 5ESS E-911 tandem to directly query more than one database for routing information is not available today. SWBT is not aware of any plans by the manufacturer (Lucent) to develop this capability in the future.

backup and restore capabilities and procedures; how long does it take to recover from a catastrophic failure; how well is the system maintained; how heavy is the system loaded, etc.). Another consideration is that overall reliability of the routing system will be degraded from its current level by adding additional possible points of failure (e.g., a second database, the interconnecting network, increased complexity in our system by the existence of new algorithms and procedures needed to determine which database to query). Finally, call processing delay would be incurred as a result of adding multiple decision trees in software to determine with which provider the Selective Routing data is stored.

It stands to reason that other third party database providers operating in the State of Texas may well demand similar access. Based on these very real concerns for the integrity of this vital emergency network, our recommendation remains, as previously offered, that SWBT and SCC jointly work with the State of Texas to explore AIN feasibility concepts over the coming months separate and apart from the Pilot Phase.

SCC does not have a Certificate of Convenience and Necessity to provide telecommunications services, nor does SCC have a Certificate of Operating Authority or a Service Provider Certificate of Operating Authority. Indeed, SCC does not claim that it is a provider of any telecommunications service of any sort but admits, instead, that it is an information services provider. (See SCC Response to SWBT's Motion to Dismiss at 3)

The Federal Telecommunications Act (FTA) limits SWBT's obligation to provide interconnection at any technically feasible point to requesting telecommunications carriers. The FTA similarly limits SWBT's obligations to provide nondiscriminatory access to unbundled network elements at any technically feasible point to requesting telecommunications carriers. SWBT, therefore, has no duty under the FTA to provide interconnection or access to unbundled network elements to information service providers,

such as SCC. In addition, in evaluating technical feasibility, the FCC found that "negative network reliability effects are necessarily contrary to a finding of technical feasibility. Each carrier must be able to retain responsibility for the management, control, and performance of its network."<sup>3</sup>

## **II. SWBT'S RESPONSES**

### **Question 1**

***Is SWBT obligated under state or federal law to provide unbundled access to its 9-1-1 network and 9-1-1 Database Management System services?***

No. SWBT is not required under state or federal law to provide unbundled access to its 911 network to a company that is not a telecommunications carrier. Section 251(c)(3) of the FTA provides:

...each incumbent local exchange carrier has the following duties...(3) The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point. (Underline added for emphasis.)

SWBT's obligation to provide access to unbundled network elements therefore is limited to requesting telecommunication carriers for the provision of telecommunications service. SWBT has no obligation to provide non-telecommunications carriers, such as SCC, access to unbundled network elements under the FTA.

SCC is not a telecommunications carrier under the FTA. Telecommunications carrier is defined in the FTA as a "...provider of telecommunications service..." 47 U.S.C. 157(49). Telecommunications in turn is defined as "...the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or

<sup>3</sup> II FCC Red 15490, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Dockets 96-98 and 95-185, August 6, 1996, paragraph 203.

content of the information as sent and received." 47 U.S.C. 157(48). SCC is providing a database management service to the State of Texas and is by its own admission, an information service provider. It is not transmitting calls containing information between points specified by the end-user. SCC, therefore, has no right under the FTA to receive unbundled access to SWBT's 911 network.<sup>45</sup>

In addition, the unbundling requirements of the FTA make clear that the telecommunications carrier requesting network elements must use those elements to provide telecommunications service. ACSEC, GHC, and SCC do not want access to unbundled network elements to provide telecommunications service. Instead, ACSEC, GHC, and SCC want SWBT to query an SCC database containing routing instructions to determine how SWBT should route a 911 call over SWBT's network. This goes far beyond the FTA's requirements and is not technically feasible as explained in footnote 1. The FTA requires SWBT to make certain parts of its network available to requesting telecommunications carriers to provide telecommunications services. The ACSEC, GHC, and SCC want to require SWBT to use a third party vendor's database in the provision of

<sup>4</sup> The U.S. Supreme Court recently vacated the FCC's rules on the specific unbundled network elements that the BOCs must offer requesting telecommunications carriers and remanded to the FCC the issue of which unbundled network elements must be made available to requesting telecommunications carriers. Until the FCC has an opportunity to promulgate new rules complying with the U.S. Supreme Court's standards, no further unbundling should be required. 47 C.F.R. 51.319

<sup>5</sup> In its Response to SWBT's Motion to Dismiss, SCC argued that under federal law, SWBT must furnish providers of information services, which include E-911 services, with access to carrier networks on an unbundled basis pursuant to FCC's Computer II and Computer III decisions. This is wrong. As the FCC stated in its 911 Forbearance Order, "Prior to the 1996 Act, the Commission established, in the Computer II and Computer III Proceedings, a regulatory regime that distinguished between basic and enhanced services. In 1982, shortly before the Computer II rules first took effect, the Common Carrier Bureau (Bureau) waived those rules to permit AT&T and its then affiliated BOCs to continue to offer E-911 service and associated customer premises on an integrate basis." *Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, Memorandum Order, CC Docket No. 96-149, February 6, 1998, paragraph 13.* There therefore has been no finding that the FCC's Computer II and Computer III rules apply to E-911 services and that those rules require the unbundling that SCC is suggesting.

SWBT's own telecommunications services. Nowhere does the FTA require SWBT to use a third party's database to provide SWBT's own telecommunications services.

As to SWBT's 9-1-1 network, the Federal Communications Commission (FCC) found that network functions that are centralized in tandem switches, including the routing of calls to operator services, and call-related databases that are used in the routing of calls, are network elements. 47 C.F.R. 51.319. In regard to 9-1-1 Database management systems, SWBT is required under the FCC's 911 Forbearance Order to provide unaffiliated entities all listing information, including unlisted and unpublished numbers as well as the numbers of other LECs customers, that it uses to provide E 911 services. SWBT is required to provide these listings at the same rates, terms, and conditions, if any, it charges or imposes on its own E-911 services. SWBT has complied with this requirement by offering to provide a service order extract of listing information, including unlisted, unpublished, and independent and CLEC listing information, to SCC, on the same terms, conditions, and rates that SWBT imposes on its own 911 services.

In regard to state law, PURA authorizes unbundling of an incumbent carrier's network under Tex. Util. Code § 60.021 and § 60.022 (b). The pertinent provisions are as follows:

**§ 60.021. Minimum Unbundling Requirement**

At a minimum, an incumbent local exchange carrier shall unbundle its network to the extent the Federal Communications Commission orders.

**§ 60.022. Commission Unbundling Orders**

(b) Before ordering further unbundling, the commission must consider the public interest and competitive merits of further unbundling.<sup>8</sup>

<sup>8</sup> The core pertinent provision was stated in the pre-Code codification of PURA as follows: "The commission may order further unbundling only after considering the public interest and competitive merits of further unbundling." Art. 1448c-0 § 3.452(c).

PURA defines "telecommunications provider" in a way that expressly excludes " a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services...." Pub. Util. Code §§ 51.002(10) & (10) (B); formally art. § 3.002(11). In reaching a decision to unbundle any telecommunications service, PURA requires the Commission to consider both the "public interest" and "competitive merits" of the proposal. When the affected service is E-911, with its great importance to the safety and well-being of Texas citizens, the weight accorded to public interest concerns, such as the speed and reliability of E-911 service, greatly outweighs the very limited "competitive merits" of having two entities, instead of just one, able to insert routing information into the local network.

ACSEC elsewhere cites Tex. Util. Code § 61.041 for the premise that the PUC can prohibit SWBT from discriminating in favor of an affiliate and against any other person in providing or procuring a service, and Tex. Util Code § 58.053 for the proposition that SWBT can be ordered to modernize its 911 network, specifically by making it digital. ACSEC Petition at 3 and at 5 n. 3. The "affiliate discrimination" statute is not applicable, as SWBT does not rely on any affiliate in rendering E-911 services because SWBT provides such services.

#### **Question 2**

***Is SWBT obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real-time routing of 9-1-1 calls?***

No. SWBT is not obligated under state or federal law to allow other providers direct access to SWBT's 9-1-1 tandem to permit real time data interjection for the purpose of real-time routing of 9-1-1 calls. The ACSEC, GHC, and SCC want this Commission to: 1) find that an information service provider, such as SCC, can directly connect to SWBT's 911 tandem switches, and, 2) then find that SWBT must query a routing instruction database

maintained by SCC to determine how SWBT should route live 911 calls over SWBT's network. (See discussion of network concerns on pp. 4-5.)

SWBT has no obligation under the FTA to interconnect its facilities with a non-telecommunications provider. Section 251(c)(2) provides:

"...each incumbent local exchange carrier has the following duties..2) The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network." (Underline added for emphasis.)

The FTA limits interconnection to requesting telecommunications carriers. SWBT, therefore, has no obligation under the FTA to permit SCC, an information service provider, to interconnect its facilities with SWBT's 911 tandem switch.

Like the FTA, PURA recognizes a clear distinction between telecommunications providers and those who offer an information service. PURA in fact defines "telecommunications provider" in a way that expressly excludes "a provider of enhanced or information services, or another user of telecommunications services, who does not also provide telecommunications services ...." Pub. Util. Code §§ 51.002(10) & (10)(B); formerly art. § 3.002(11).

A physical connection to SWBT's network coupled with an ability to affect call routing constitutes a form of interconnection. But "interconnection," in the form allowed under PURA, involves "the termination of local intraexchange traffic of another local exchange company or holder of a service provider certificate of operating authority within the local calling area of the terminating local exchange company or certificate holder for calls that originate and terminate in this State." Tex. Util. Code § 60.121; formerly art. 1446c-0 § 3.458.

PURA also defines the provision of "access to 911 service" as a "[b]asic local telecommunications service." Tex. Util. Code § 51.002(1)(E); formerly art. 1446c-0 §

3.002(1)(E); *see also* Pub. Util. Code § 58.051(8) (formerly art. 1446c-0 § 3.353(a)(8)) (stating that providing "access to 911 service" is a "basic network service").

SCC, an information service provider, should not be allowed to interconnect with SWBT's network. The PURA provisions set out above indicate that SCC is not entitled to seek interconnection unless it is actually a provider of "local intraexchange traffic." *See* Tex. Util. Code § 60.121; formerly art. 1446c-0 § 3.458; *see also* 16 T.A.C. § 23.97(b)(1) ("Rule 23.97") (restating this statutory standard in its definition of "interconnection"). Rule 23.97 also makes clear that the purpose of interconnection is "to ensure that all providers of telecommunications services which are certificated to provide local exchange service ... within the state interconnect and maintain interoperable networks ...."

The Substantive Rules on Interconnection also provide that the Certified Telecommunications Utility (CTU) "...is responsible for selectively routing a 9-1-1 customer call to the appropriate CTU's tandems or applicable Public Safety Answering Point (PSAP) as applicable based on the ANI or location of the caller." *See*, 16 T.A.C. §23.97(e)(1)(B)(IV). SWBT, therefore, is responsible under the Interconnection Rules for selectively routing an end-user's 911 calls to the appropriate PSAP. Information service providers, such as SCC, have no responsibility under the Texas Substantive Rules on Interconnection for determining how 911 calls should be routed.

### Question 3

***Is SWBT obligated under and/or prohibited by state or federal law to disclose customer proprietary network information to a third party database provider to maintain the State's 9-1-1 database and route 9-1-1 calls?***

SWBT is prohibited under Section 222 of the FTA from disclosing Customer Proprietary Network Information (CPNI) to unaffiliated parties without the customer's consent. CPNI is defined as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service

subscribed to by any customer...." 47 U.S.C. 222 (f).

The ACSEC, GHC and SCC want SCC to have a direct feed into SWBT's Service Order System (SORD), which contains end-user customer records regarding the telecommunication services they have ordered. Section 222(c) of the FTA, however, provides:

**Privacy Requirements for telecommunications carriers. Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information ...shall only use, disclose, or permit access to ...customer proprietary network information in its provision of (A) the telecommunications service from which the information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service..."**

SWBT, therefore, is prohibited by law from granting third party vendors, such as SCC, a direct feed to SWBT's Service Ordering System (SORD) without the customer's authorization, since SORD contains customer network proprietary information (CPNI) reflecting the telecommunications services ordered and used by the customer.

Although Section 222 of the FTA prohibits SWBT from providing SCC a direct feed into SWBT's SORD system, SWBT has offered to provide SCC a service order extract from SWBT's SORD system. The extract contains the subscriber name, address and telephone number for all listed, unlisted, and unpublished SWBT customers and other LEC customers. Subscriber name, address, and telephone number alone is not CPNI under Section 222(f)(1)(B) of the FTA. SWBT has offered to provide this extract twice a day to SCC. There is no provision in Texas law that alters the requirements of the federal law.

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<sup>1</sup> The Senate Report indicates that the "by law" provision was intended to permit disclosure of customer proprietary network information (CPNI) in response to a court order.

**Question 4**

***Is the Commission's ruling in the Mega-Arbitration I proceeding that "SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI's Service Control Point" dispositive in this matter?***

The reasoning of the Commission's ruling is dispositive. The PUC has addressed the same issue in an order dated November 7, 1996 in Mega-Arbitration I (Consolidated Docket Nos. 16189, 16196, 16226, 16285 & 16290). The PUC ruled that "SWBT is not required to allow Signaling System 7 (SS7) advanced intelligent access from MCI's Service Control Point (SCP)." (See Paragraph 5, p. 7) This MCI access issue is precisely the same as the issue presented here in that querying a third party database allows many opportunities to jeopardize 911 call routing as explained on pages 2-5 of this Brief.

In the Mega-Arbitration MCI raised this issue in its Petition for Arbitration at page 23 by stating as follows:

MCI submits that SWBT should be required to make available its databases (for both non-call processing and call processing functions) and signaling capabilities... MCI should be permitted to designate the signaling point of interconnection for access to databases and signaling at any technically feasible point.

The FCC's First Report and Order in CC Docket 96-98 also addresses this issue in several places. At ¶ 479, the FCC states that "incumbent LECs, upon request, must provide nondiscriminatory access to their signaling links and STPs on an unbundled basis." However, the FCC continues at ¶ 480:

Because of the screening role played by the STP and associated network reliability concerns that were raised in the record, however, we do not require that incumbent LECs permit requesting carriers to link their own STPs directly to the incumbents switch or call-related databases. (Emphasis added)

But then the FCC concludes at ¶ 485:

We conclude that it is not technically feasible to unbundle the SCP from its associated STP. ...We, therefore, emphasize that access to call-related databases must be provided through interconnection at the STP and that we do not require direct access to call-related databases. (Emphasis added)

**Question 5**

***Are third parties that provide 9-1-1 database services required to obtain an appropriate certificate in order to interconnect under § 251(c) of the federal Telecommunications Act of 1996?***

Yes. Section 251(c) of the FTA provides that a telecommunications carrier can request interconnection with the incumbent local exchange carrier. A third party that provides 9-1-1 database services, therefore, would have to provide telecommunications services before it can request interconnection. Even if a third party providing 9-1-1 database services were to become a telecommunications carrier, Section 251(c) provides that interconnection is for the purpose of transmitting and routing of telephone exchange and exchange access services. The incumbent local exchange carrier, therefore, is required to permit other telecommunications carriers to interconnect to the incumbent's facilities so the other telecommunications carrier can transmit and route telecommunications traffic over the incumbent's facilities. The FTA did not overturn or eliminate the State certification requirements. Under the FTA, for SCC to be a carrier, it is required to get state certification.

**Question 6**

***Does the FCC's 9-1-1 Forbearance Order impact this case; if at all?***

Yes, the FCC's 9-1-1 Forbearance Order imposed certain obligations on the Bell Operating Companies (BOCs) if they wished to continue to provide 9-1-1 service from their telephone companies. In that docket, the FCC found that the listing information retrieved by the PSAP from the BOC's ALI database constituted an interLATA information service since the PSAP crossed LATA boundaries to retrieve the information. The FCC then examined whether it could forbear from requiring the BOCs to provide 911 service from a separate 272 affiliate because of the interLATA information service component of 911, and instead permit the BOCs to provide 911 service from the telephone company. The FCC ruled that

BOCs could provide 911 service from the telephone company, provided the BOC made available the listing information in their ALI databases to competing entities on non-discriminatory terms. SWBT has complied with this requirement by offering to provide a service order extract of listing information to SCC.

The duty to provide listing information in SWBT's ALI database was the only obligation imposed on SWBT. The FCC imposed no other obligation on SWBT to provide third party vendors, such as SCC, any additional information, services, unbundling or interconnection.

### Conclusion

SWBT's proposed network solution provides a means to accomplish SCC's functional requirements. Due in part to the Texas Request For Offers, SWBT began the development of our proposed ALI-to-ALI Steering and Telephone Number/Emergency Service Number (TN/ESN) functional requirements last fall. This method, provides for competitively neutral Selective Routing updates. All third party database providers, as well as our own Selective Routing update process, would be handled in the same manner and frequency of update. This process also provides the ease of transfer of subscriber records between PSAPs when utilizing different database providers.

SWBT encourages the PUC to dismiss this Petition and allow ACSEC, GHC, SCC and SWBT to continue to participate in the development of 911 standards in Project No. 19203. This will also allow the parties to work together to implement the Pilot Program. If the parties work with SWBT on these standards, a satisfactory resolution can be facilitated in a timely manner.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I, Garry S. Wann, Senior Counsel, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 12<sup>th</sup> day of February, 1999 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.

